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FISCAL IMPACT REPORT

SPONSOR Salazar DATE TYPED 2/18/04 HB 32/aHTRC

SHORT TITLE Indian Gaming Revenue Distribution SB _____

ANALYST Neel

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
	See Narrative			Recurring	Local Government

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
	See Narrative		Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Response Received From:

Gaming Control Board (GCB)

Department of Finance and Administration (DFA)

No Responses Received From:

Attorney General (AG)

SUMMARY

Synopsis of HTRC Amendment

The House Taxation and Revenue Committee amendment changes the distribution from one-sixth of net receipts to 11.4 percent, thereby reducing the fiscal impact to \$115 thousand (see revised fiscal impact).

Synopsis of Original Bill

The bill amends statute to make a distribution of one-sixth of net receipts of revenue sharing from Indian gaming facilities located within the municipality. The distribution will be made to the municipality where the gaming facility is located for infrastructure or for police and fire protection. Distributions are required to be made each quarterly with DFA administering the program.

REVISED FISCAL IMPLICATIONS

The GCB considers net revenues figures by tribes as confidential as prescribed under the gaming compacts; therefore an accurate fiscal impact is difficult to ascertain. However, the impact will be minimal since only one facility would qualify for the one-sixth distribution (Santa Clara). Based on historical figures listed below, the estimated impact would be approximately \$115 thousand $((.08 \times \$16.9 \text{ million}) \times .114)$. The current Consensus Revenue Estimating Groups (CREG) FY05's forecast for tribal revenue sharing is \$34.7 million. In order to determine a fiscal impact, figures by tribe will be required.

Continuing Appropriations. HB 32 appropriates one-sixth of net receipts from revenue sharing agreements for Indian gaming facilities located within a municipality. This appropriation continues in subsequent years.

OTHER SUBSTANTIVE ISSUES

Tribal Gaming. Currently 13 tribes have gaming compacts in New Mexico with Pojoaque and Mescalero under the 1997 compact and 11 others under the 2001 compact. However, 16 casinos are in operation because four tribes have more than one casino and the Jicarilla Apache Nation is not currently operating a casino. As described by GCB and the Attorney General, three legal actions related to the compacts are pending:

As provided under the 1997 gaming compacts, the Gaming Control Board initiated arbitration with the pueblos of Taos and Acoma and the Mescalero Apache tribe over the nonpayment of revenue sharing. After arbitration was initiated, it became apparent the tribes and arbitrators intended to decide the legal question of whether or not revenue sharing was legal under the federal Indian Gaming Regulatory Act. The New Mexico Attorney General determined the legality of revenue sharing under the federal law was not subject to arbitration but must be decided in the courts. The arbitration has been stayed by the New Mexico Supreme Court.

New Mexico Supreme Court Case. The New Mexico Attorney General and GCB filed a suit with the Supreme Court in 2000 to halt the arbitration proceedings between GCB and three tribes because the arbitrators had decided they would determine if revenue sharing in the 1997 compact was legal under federal law. The Supreme Court stayed the arbitration proceedings until it makes a final determination on the merits of the Attorney General's claim. A final decision by the Supreme Court is pending.

Federal Lawsuit. In June 2000, the Attorney General filed suit in federal court against 12 gaming tribes in New Mexico for failure to make their revenue sharing payments under the 1997 gaming compacts. The lawsuit filed by the state seeks (1) a declaration that the revenue-sharing provisions of the 1997 compacts are legal under the Indian Gaming Regulatory Act; (2) a

declaration that the tribe's failure to make all revenue-sharing payments is a violation of the compact; and (3) an injunction against all Class III gaming conducted by the tribes, or, if the revenue-sharing provision is not enforceable, a ruling that the compact is invalid. Ten of the 12 tribes settled the case by signing the 2001 compact and paying the state collectively \$91 million. The two remaining tribes, Pojoaque Pueblo and Mescalero Apache, have a motion to compel arbitration pending in front of the federal court. Once that motion is filed, the Attorney General will either be in arbitration or proceeding on the merits of the claim.

The current gaming compacts, which became effective in December 2001 and expire in 2015, provide for revenue sharing at the rate of 8 percent per annum for net win over \$12 million and, if under \$12 million, 3 percent per annum for the first \$4 million. Additionally, the compacts state the tribes will pay the state \$100.0 per year as "reimbursement of the state's costs of regulation. The tribe and the state further agree that such amount fairly reflects the state's costs of regulation ..." This amount is to increase by 3 percent each succeeding year.

The following information shows tribal activity since inception of the 1997 compacts:

Tribal Revenue Sharing and Regulatory Fee Payments

1997 Compact:

FY98-FY00 \$ 66,818.9

FY02 Settlement Agreement 91,000.0

Total 157,818.9

2001 Compact:

FY02 \$ 9,717.2

FY03 (2nd qtr. pd. in July) 7,989.2

Total 17,706.4

Total Received from Tribal Gaming \$175,525.3

2001 Compacting Tribes, Net Win* 12/15/01 - 6/30/02

Acoma \$23,334.0

Isleta 51,120.4

Laguna 8,568.3

Sandia 58,888.5

San Felipe 13,025.5

San Juan 12,032.1

Santa Ana 22,617.2

Santa Clara 16,939.6

Taos 3,660.5

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